

FILED BY CLERK

APR 21 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

EDWARD and GUADALUPE JEONG,	)	
husband and wife; and ORLANDO	)	2 CA-CV 2009-0106
DIAZ, a single man,	)	DEPARTMENT A
	)	
Plaintiffs/Appellees,	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
v.	)	Rule 28, Rules of Civil
	)	Appellate Procedure
ALBERT MUNGUIA, JR., a single	)	
man,	)	
	)	
Defendant/Appellant.	)	
	)	

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APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. CV-08-609

Honorable Monica L. Stauffer, Judge

AFFIRMED

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Marc Mauseth

Tubac  
Attorney for Plaintiffs/Appellees

Albert Munguia, Jr.

Tucson  
In Propria Persona

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E S P I N O S A, Presiding Judge.

¶1 Defendant/appellant Albert Munguia, Jr. appeals from the trial court's entry of judgment and award of damages in favor of plaintiffs/appellees Edward Jeong, Guadalupe Jeong, and Orlando Diaz (plaintiffs). For the reasons set forth below, we affirm.

### **Factual Background and History**

¶2 We view the facts in the light most favorable to upholding the trial court's judgment. *Sabino Town & Country Estates Ass'n v. Carr*, 186 Ariz. 146, 148, 920 P.2d 26, 28 (App. 1996). Munguia owned a parcel of property in Nogales, Arizona. Diaz owned the adjacent parcel to the north, and the Jeongs the adjacent parcel to the south. Munguia brought two unsuccessful justice court actions in 2007, one against the Jeongs and the other against Diaz's parents, alleging in both actions that his neighbors had trespassed upon and damaged his property. Subsequently, plaintiffs sued Munguia, seeking both damages and injunctive relief, asserting that, "[f]ollowing the adverse judgment[s] in the [justice court] cases, Munguia ha[d] embarked on a program of continued harassment of his neighbors," including cutting utility lines and erecting barriers to their property.

¶3 After conducting a two-day hearing, the trial court granted plaintiffs' motion for a preliminary injunction. The court also scheduled a one-day bench trial to address plaintiffs' damages and all remaining unresolved issues. Following trial, the court entered judgment for plaintiffs including damages, punitive damages, and attorney fees. After

the court denied Munguia's subsequent motion for a new trial, Munguia timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(B).

## **Discussion**

### **Attorney Misconduct**

¶4 Munguia first offers a number of criticisms of plaintiffs' counsel's conduct, including the timing and adequacy of plaintiffs' disclosures pursuant to Rules 16 and 26.1, Ariz. R. Civ. P.; the introduction of testimony Munguia claims was false; counsel's failure to answer an interrogatory; and his use of an easement agreement. Munguia claims these instances of misconduct deprived him of a fair trial.

¶5 Munguia, however, has failed to develop these arguments adequately, to demonstrate that he had raised the issues in the trial court, or to provide a sufficient record to permit review of his claims. The appealing party "has the burden of providing us with all portions of the trial record relevant" to the issues on appeal, and "[w]e may only consider the matters in the record before us." *A Tumbling-T Ranches v. Flood Control Dist. of Maricopa County*, 222 Ariz. 515, ¶ 99, 217 P.3d 1220, 1248 (App. 2009), quoting *Ashton-Blair v. Merrill*, 187 Ariz. 315, 317, 928 P.2d 1244, 1246 (App. 1996). "Once a party fails to meet that burden[,] we presume the evidence support[ed] the trial court's ruling." *Id.* (refusing to address merits of argument when appellant failed to provide necessary record on appeal).

¶6 Likewise, arguments that are insufficiently briefed are waived. *See* Ariz. R. Civ. App. P. 13(a)(6) (An argument . . . shall contain the contentions of the appellant with

respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.’); *Polanco v. Indus. Comm’n of Ariz.*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (failure to develop and support argument waives issue on appeal). Finally, “[a]n appellant must specify with particularity and with transcript reference such rulings of the trial court as he desires to question on appeal.” *Gibson v. Boyle*, 139 Ariz. 512, 521, 679 P.2d 535, 544 (App. 1983); *see also Nat’l Broker Assocs., Inc. v. Marlyn Nutraceuticals, Inc.*, 211 Ariz. 210, ¶ 30, 119 P.3d 477, 483 (App. 2005) (“We will not address issues raised for the first time on appeal.”). Accordingly, we do not further address these claims.<sup>1</sup>

## **Venue**

¶7 Munguia next argues the trial court erred by denying his motion for change of venue. He contends the case should have been transferred to Pima County because plaintiffs did not timely respond to his affidavit of residence, in which he asserted he was a Tucson resident. However, an order denying a change of venue is not an appealable decision and must be pursued by special action. *Apache County v. Superior Court*, 163

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<sup>1</sup>For example, Munguia argues plaintiffs’ attorney failed to answer an interrogatory seeking information that “was crucial to rebut the testimony” of a witness and contends such failure was “clearly a case of gross misconduct which has prevented [him] from obtaining a fair and impartial trial.” Munguia’s argument fails to explain who this witness is, what his testimony was, how information sought by the interrogatory was necessary to rebut the testimony, whether Munguia raised this issue before the trial court, or how any legal authority would mandate reversal.

Ariz. 54, 55, 785 P.2d 1242, 1243 (App. 1989). Accordingly, we do not address this issue.<sup>2</sup>

## **Mistrial**

¶8 Munguia also contends that, because three of his subpoenaed witnesses failed to appear at the second day of the preliminary injunction hearing, the trial court erred by denying his subsequent motion for a mistrial. But Munguia has failed to adequately brief this issue, provide any citation to the record demonstrating the substance or relevance of the missing witnesses' testimony or cite any pertinent authorities mandating reversal on such a basis. Accordingly, this argument likewise is waived. *See* Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2.

## **Strict Time Limits**

¶9 Munguia next claims the plaintiffs were allowed more time to present their case than he was and argues the trial court was "absolutely biased and prejudiced" against him as evidenced by its "not allowing [him] to present his case and call every subpoenaed witness." Again, Munguia has not adequately briefed this issue. First, he has failed to provide a sufficient record to allow us to review the proceedings below. *See A Tumbling-*

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<sup>2</sup>Even assuming this argument were properly before us, it is without merit. The statute upon which Munguia relies, A.R.S. § 12-404, applies only when an action "is not brought in the proper county." § 12-404(A). Because this lawsuit involves real property located in Nogales, the complaint was properly filed in Santa Cruz County. *See* A.R.S. § 12-401(12) (actions involving damages to real property "shall be brought in the county in which the real property . . . is located"); *Amparano v. ASARCO, Inc.*, 208 Ariz. 370, ¶ 16, 93 P.3d 1086, 1091 (App. 2004) (explaining § 12-404 applies "if the action is filed in a county in which venue is not proper").

*T Ranches*, 222 Ariz. 515, ¶ 99, 217 P.3d at 1248. Second, he has failed to indicate where he raised this issue before the trial court. *See Nat'l Broker Assocs., Inc.*, 211 Ariz. 210, ¶ 30, 119 P.3d at 483. Finally, he has neither provided any authority indicating the court reversibly erred by denying him sufficient time to call fourteen witnesses, *see* Ariz. R. Civ. App. P. 13(a)(6), nor specified what evidence he was prevented from presenting, *see Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 34, 977 P.2d 807, 813 (App. 1998) (finding no reversible error resulted from limiting time to present case when plaintiffs ‘fail[ed] to specify what additional evidence they [had] wanted to present but could not’). Accordingly, we do not further address this issue.<sup>3</sup>

### **Excessive and Unjustified Damages**

¶10 Finally, Munguia contends the damages awarded to plaintiffs were ‘excessive and unjustified’ and ‘not supported by the evidence.’ Specifically, he argues that the damages awarded to the Jeongs were ‘outrageous and impossible,’ that Diaz committed perjury and therefore should not have received an award of punitive damages, and that an easement agreement upon which plaintiffs had relied was invalid. But once again, Munguia has failed to sufficiently develop this argument, provide an adequate record for appeal, or otherwise present more than conclusory assertions about why the trial court’s damages awards should be reversed. ‘If the appellant intends to urge on appeal that a

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<sup>3</sup>Munguia’s disparaging remarks about the trial court do not appear to be supported by the available record and do not advance his cause. *See G.K. Techs. v. Indus. Comm’n of Ariz.*, 155 Ariz. 599, 604, 749 P.2d 389, 394 (App. 1988) (challenges to trial court’s impartiality not well founded when solely based on court’s adverse rulings).

finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a certified transcript of all evidence relevant to such finding or conclusion.” Ariz. R. Civ. App. P. 11(b)(1); *see also Romero v. Sw. Ambulance & Rural/Metro Corp., Inc.*, 211 Ariz. 200, ¶ 4, 119 P.3d 467, 470 (App. 2005) (holding unsupported arguments without relevant transcripts “insufficient for us to meaningfully review the trial court’s rulings or to overcome the presumption that those rulings are supported by the record”). Accordingly, we affirm the trial court’s judgment on this issue as well.

### **Sanctions**

¶11 Plaintiffs have asked that this court sanction Munguia pursuant to Rule 25, Ariz. R. Civ. App. P. This rule provides for the imposition of reasonable penalties or damages when an appeal is frivolous or taken only for the purpose of delay, or when a party “has been guilty of an unreasonable infraction of these rules.” Ariz. R. Civ. App. P. 25. Although we recognize the poor quality of Munguia’s briefs and his failure to comply with the applicable rules, in our discretion we deny plaintiffs’ request. *See Price v. Price*, 134 Ariz. 112, 114, 654 P.2d 46, 48 (App. 1982) (sanctions under Rule 25 applied “with great reservation”). Plaintiffs have also requested sanctions pursuant to Rule 8(a), Ariz. R. Civ. App. P., based on Munguia’s failure to post the required bond. We decline to impose sanctions on this basis as well.

## Disposition

¶12 For the reasons stated above, the trial court's judgment in favor of plaintiffs is affirmed.

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge